

OFFICE OF THE LEGISLATIVE AUDITOR

Report on Preliminary Survey

BUILDING CODES DIVISION
DEPARTMENT OF ADMINISTRATION

83S-2

Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620



ROBERT R. RINGWOOD
LEGISLATIVE AUDITOR

STATE OF MONTANA
Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/449-3122

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DEPUTY LEGISLATIVE AUDITORS:
JAMES H. GILLETT
FINANCIAL/COMPLIANCE AUDITS

SCOTT A. SEACAT
PERFORMANCE AUDITS

STAFF LEGAL COUNSEL
JOHN W. NORTHEY

The Legislative Audit Committee
of the Montana Legislature:

This is our preliminary survey of the Building Codes Division of the Department of Administration. The purpose of this survey is to review the division's inspection, enforcement, and permitting functions to determine if further performance audit work is needed.

The survey identifies several areas where state building code activities could be improved. We do not recommend conducting a performance audit at this time because many of the issues have recently been addressed by the Legislature or could be corrected by the division and the department.

We wish to express our appreciation to the director and the staff of the department for their cooperation and assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Seacat".

Scott A. Seacat
Deputy Legislative Auditor

Approved:

A handwritten signature in black ink, appearing to read "Robert R. Ringwood".

Robert R. Ringwood
Legislative Auditor

PRELIMINARY SURVEY

BUILDING CODES DIVISION

DEPARTMENT OF ADMINISTRATION

INTRODUCTION

A preliminary survey was conducted of the Building Codes Division, Department of Administration, at the request of the Legislative Auditor.

The purpose of this survey was to review the division's inspection, enforcement, and permitting functions to determine if further performance audit work is needed.

AUDIT FEASIBILITY

Our preliminary survey has identified several areas which could be included in a performance audit of the activities and functions of the Building Codes Division.

1. The lack of enforcement of building standards and the legal recourse for building owners.
2. Buildings not being inspected for compliance with the codes.
3. Inspections by local jurisdictions.
4. Overlap of inspections with the Department of Commerce.
5. Computerization of division records.
6. Other concerns.

A performance audit of the Building Codes Division would not produce recommendations which, if implemented, would result in a substantial saving of money by the division. However, an audit

could address issues of public health and safety. We do not recommend doing an audit of the division because:

- Some of the issues have already been addressed by the Legislature.
- Further documentation of the issues is not necessary.
- The division is aware of the issues and could make necessary changes including seeking legislation.

BACKGROUND

The Building Codes Division was established in its present form in 1977. Prior to that the Departments of Administration (Construction Regulation Bureau), Justice (Fire Marshal Bureau), Health and Environmental Sciences, Social and Rehabilitation Services, Professional and Occupational Licensing (now part of the Department of Commerce), Labor and Industry, and the Office of the Superintendent of Public Instruction were involved in code enforcement. On July 1, 1977 reorganization transferred electrical and plumbing inspections from the Department of Professional and Occupational Licensing to the Building Codes Division. The division is now responsible for building, mechanical, elevator, factory-built (modular) building, recreational vehicle, electrical, and plumbing inspections. It also reviews plans for public buildings, schools, factory-built buildings, recreational vehicles, and elevators.

A Building Codes Advisory Council assists the division in rule changes and other areas. The council was created by Senate Resolution 34 in 1973. When initially organized the council established rules and standards for recreational vehicles and factory-built buildings. The council also helped in the operation of the division.

At the time the council met at least three times a year. Now the council meets once or twice a year to discuss rule changes and any major problems that arise. The eleven-member council consists of seven members of the building profession, a municipal building inspector, the director of the Department of Health and Environmental Sciences or his designee, the state fire marshal or his designee, and a member of the general public.

The Building Codes Division is organized into the Building Standards Bureau, the Mechanical Safety Bureau, and the Electrical Safety Bureau.

Building Standards Bureau

The Building Standards Bureau enforces the Uniform Building Code; the Uniform Housing Code; the Uniform Code for the Abatement of Dangerous Buildings; the Model Code for Energy Conservation in New Building Construction; and the Recommended Requirements to Code Officials for Solar Heating, Cooling, and Hot Water Systems. The bureau also enforces construction standards for recreational vehicles. The various building codes are written by industry organizations and are designed to provide safe and uniform standards and requirements for construction and construction materials. The codes are applied to Montana buildings under Title 60, chapter 50, MCA, with certain exceptions. By statute the state building codes do not apply to residential buildings containing less than five dwelling units, any farm or ranch building, or any private garage or private storage structure used only for the owner's use.

Two full-time bureau employees enforce the codes in areas where there is no local jurisdiction for code enforcement. The inspectors examine buildings for compliance with the structural requirements detailed in the building codes. There were 1,573 building inspections in fiscal year 1981-82.

If a building under construction is found not to have a building permit, a notice of violation is issued by the inspector. The notice states that the division is responsible for enforcing the building codes and a permit is needed. The permit will be issued after the building plans have been reviewed and approved by the bureau. Violations of the code in the construction of the building can also be detailed on the notice. The division can enforce the notice or the codes by having a judge of the district court in the judicial district in which the building is located enjoin the construction or use of the building.

The bureau also certifies municipalities or counties to enforce the codes and review plans of public buildings. Codes adopted by local governments must be the same as those adopted by the division. However, local governments need only adopt those codes which they intend to enforce; that is, plumbing, building, electrical, etc. A county or municipality, in contrast with the state, is allowed by statute to cover residential buildings containing less than five dwelling units, any farm or ranch building, or any private garage or private storage structure used only for the owner's use. The local legislative body or county commissioners must make the building code specifically applicable to those structures by ordinance or by resolution.

To obtain certification the local governments must apply to the bureau and meet requirements that are detailed in the department's rules. As of February 1983, 55 local jurisdictions have applied and received certification for code enforcement. No local certifications have been revoked.

Plans for all factory-built buildings and recreational vehicles (RVs) manufactured in the state are reviewed by the bureau. Plans for factory-built buildings and RVs from another state must also be reviewed by the bureau if that state does not have a review system comparable to Montana's. Twenty-one states manufacturing factory-built buildings and ten states manufacturing RVs have reciprocity with Montana. RV plans are reviewed for electrical, plumbing, life-safety, and other features. Two hundred eighty-seven RV plans were reviewed in fiscal year 1981-82. Factory-built building plans are reviewed for structural, electrical, plumbing, mechanical, life-safety, and other features. In fiscal year 1981-82 41 factory-built building plans were reviewed. The buildings and vehicles are also inspected by the two bureau inspectors on the dealers' lots. Building and RV manufacturing plants in Montana are examined by the inspectors. Fifteen inspection visits to lots were conducted in fiscal year 1981-82.

Plans and construction of schools and public buildings are monitored by the bureau where there is no local jurisdiction. Ninety-one school plans were reviewed and 131 inspections of schools were conducted in fiscal year 1981-82. In the same time period 475 public building plans were reviewed.

Mechanical Safety Bureau

The Mechanical Safety Bureau enforces the Uniform Plumbing Code, Uniform Mechanical Code, and the Safety Code for Elevators and Escalators where there is no local enforcement. These codes have been adopted in order to set minimum standards for plumbing systems, heating and cooling systems, and elevators in Montana buildings with certain exceptions.

The plumbing code does not apply to mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system. There is one full-time plumbing inspector. The bureau chief also performs inspections for part of the state. In fiscal year 1981-82, the division issued 1,210 plumbing permits and conducted 2,500 inspections.

The plumbing inspection function was transferred from the Board of Plumbers to the Building Codes Division in 1977. Journeyman and master plumber licenses are issued by the board. An inspector hired by the board visits construction sites to ensure the plumber working on the project is licensed. The inspector employed by the Building Codes Division ensures that all plumbing installations are in compliance with the plumbing code.

If an installation is not in compliance or the necessary permit has not been obtained, the division's inspector can place a stop work order notice on the building. The notice specifies the number of days in which the installation must be in compliance. If any unlicensed plumber is doing the installation, the division will notify the Board of Plumbers.

By statute, the mechanical code is not applicable to residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's use. A mechanical permit is required for the installation of furnaces, refrigeration units, cooling units, ventilation fans, etc. The plumbing inspector also enforces the mechanical code. One hundred sixty-six permits and 200 inspections were made in fiscal year 1981-82.

The elevator code is applicable to passenger elevators and escalators in public places. Freight elevators and dumbwaiters are exempt. There is one part-time elevator inspector. Six hundred sixteen inspections were made in fiscal year 1981-82.

Electrical Safety Bureau

The Electrical Safety Bureau enforces the National Electrical Code where there is no local enforcement. This code sets forth minimum standards and requirements for electrical installations. The statutes specify the exceptions to enforcement by the bureau.

The codes are not applicable to the installation, alteration, or repair of electrical signal or communication equipment owned or operated by a public utility or city. The codes also do not apply to regularly employed maintenance electricians doing maintenance or line work on the business premises of their employer or to ordinary and customary in-plant or on-site installation, modifications, additions, or repairs. Electrical installations in single-family dwellings are to be inspected either by the state or the local jurisdiction.

The state employs 11 electrical inspectors. In fiscal year 1981-82 11,501 permits were issued and 23,022 inspections were made.

Like the plumbing inspections, the electrical installation inspection function was transferred to the Building Codes Division from the State Electrical Board in 1977. The board issues licenses to qualified journeyman and master electricians. An inspector is employed by the board to determine if the electricians are properly licensed. Building Codes Division inspectors ensure that the electrical installations meet code specifications. If installations are incorrect, a compliance order is issued that states what is wrong and how long the electrician has to correct the problem. If warranted, the inspector can have electrical power to the structure disconnected.

FINANCES

The Building Codes Division is funded through the revolving fund. Money in the federal and private revenue account was used for gathering data on energy conservation measures. The revenue, expenditures, and fund balance of the division for fiscal year 1981-82 is shown in Illustration 1. The net for fiscal year 1981-82 was negative because expenditures exceeded revenue. However, expenditures were within appropriation levels.

Building Codes Division
Department of Administration
(Fiscal Year 1981-82)

REVENUE, EXPENDITURE, AND FUND BALANCE BY FUND

	<u>Revolving Fund</u>	<u>Federal and Private Revenue Fund</u>
Revenue	\$792,558	\$14,474
Expenditure	<u>858,401</u>	<u>15,000</u>
Net	<u>\$(65,843)</u>	<u>\$ (526)</u>
Fund Balance June 30, 1982	<u>\$274,559</u>	<u>\$(2,175)</u>

Source: Montana Financial Report, Fiscal Year 1981-82

Illustration 1

AREAS OF CONCERN

Several areas were identified where state building code activities could be improved. These areas are discussed below.

Issue 1 - Enforcement of the Codes

Building inspectors have little legal recourse in the field if somebody is found not constructing a building according to building code standards. Conversely, plumbing inspectors can issue stop work orders and electrical inspectors can have the power supply to the structure disconnected. The plumbing and electrical inspectors can also notify the respective boards if the person doing the work is not licensed. A building inspector can only issue a notice of violation. To have the contractor stop work the division building inspector has to go through legal proceedings.

Present legal proceedings consist of attorneys at the Department of Administration writing letters to the contractors. The attorneys can request the construction or use of the building be enjoined by a judge of the district court in the judicial district in which the building is located. None of the cases that we reviewed went past the letter writing stage. We were told that the department attorneys are too busy to spend additional time on these cases. There are structures the division has inspected that it considers dangerous, yet people are using them because the department cannot close the building. For example, the basement wall of a bar had collapsed which caused the exterior wall of the building to bow significantly. Temporary corrective measures resulted in construction that was structurally inadequate. A letter was sent to the owner of the bar in August 1982 but it was ignored. A memo was sent to the legal staff October 1982 saying it might be necessary to apply the dangerous building code. As of April 1983 the bar was still open.

Bureau officials are of the opinion that the lack of enforcement of the codes is undermining the entire program. They told us many contractors are aware of the difficulties the bureau has enforcing code violations which results in some contractors delaying or not completing corrections of code violations.

Owners of a structure not built, wired, or plumbed to code standards do not have legal recourse in the building code statutes. Penalties to be assessed against builders, plumbers, or electricians to compensate for damages to owners are also not provided for in the statutes. Owners must file a civil suit to recover any damages.

Solutions to these problems could be addressed with legislative changes. In addition the department could go further than the letter writing stage and attempt to obtain injunctions against owners or contractors of buildings not built to standards. Additional audit work in this area would probably reveal little additional information. The division and department are already aware of the difficulties in this area.

Issue 2 - Buildings Not Inspected

By law, some buildings do not have to be inspected and therefore there is no assurance that these buildings meet state standards. Current building standards do not require the state to inspect any buildings containing less than five dwellings units. The 1981 Legislature amended section 50-60-102, MCA, to exclude ". . . residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch buildings, and any private garage or private storage structure used only for the owner's own use . . ." This statute provides that any private residence under the state's jurisdiction does not require an assessment of the structural soundness of the building. There is a danger of a person buying a house that is not structurally sound. A city or municipality can inspect buildings containing less than five dwelling units if an ordinance or resolution is passed in the area.

Some builders, plumbers, electricians, etc., do not always obtain the needed permits and therefore never receive inspections. Occasionally inspectors will find buildings without permits and will notify the owner or the person doing the work that a permit is

required. The only penalty for not obtaining a permit is that the permit fee is doubled. In addition, even people who obtain permits do not always call the inspectors to have the inspections made. There is no system to check permits against inspections because of the large number of manual records. In the past, there have been charges that some local jurisdictions have not been performing all of their inspections and/or their inspections are not as thorough as they could be. This could also result in some buildings not being up to state standards.

Again, the division is aware that problems exist in performing inspections on buildings in Montana. Additional auditing would probably only result in more documentation of the lack of inspections and not help in correcting the problem. Possible solutions could be sought by the department such as stiffer penalties for either not obtaining permits or for not having the inspections made. Exclusions to the building codes have already been addressed by the Legislature as recently as the 1981 session.

Issue 3 - Inspections by Local Jurisdictions

As stated earlier, cities and municipalities can conduct inspections of buildings; plumbing, electrical, and mechanical installations; and elevators after being certified by the division. Once the local jurisdiction is certified the state has no control of the inspection process in that area. Statutes or division rules do not require much information concerning how the local jurisdictions are going to conduct the inspections. The state does not follow up on work performed by local jurisdictions to ensure the inspections are being

done properly. There is some question about the degree, if any, of the state's liability for the inspections performed by certified local jurisdictions.

The cities have to submit job descriptions for the local inspectors, but the state does not ensure that the job descriptions are followed when people are hired. Many of the local jurisdictions do not require the plumbing and electrical inspectors to be licensed. Licensure would at least ensure that these inspectors are somewhat knowledgeable about the items they are inspecting.

The local jurisdictions can request to enforce only certain codes. For those codes not enforced, the state inspector has to inspect the jobs. For example, a local jurisdiction could choose to enforce all codes but the mechanical code. In this case, a state inspector would have to travel to that jurisdiction to perform any mechanical inspections. Local jurisdiction can extend 4½ miles beyond the incorporated limits of the town, but beyond that area the state inspector has to go to the projects. This extension reduces the number of projects a division inspector must visit in a city, but it increases his travel time since he has to go to all the outlying projects.

Under the previous issue we discussed the problems associated with people not obtaining permits and not requesting inspections. Both state and local jurisdiction inspections are hampered by these conditions.

An audit of local jurisdiction inspections would not result in substantial improvements in the inspection process until the concerns we have addressed with the state's system are corrected.

Additional concerns with local jurisdictions noted in this section should be addressed by the division or department.

Issue 4 - Overlap of Inspection Areas

The plumbing and electrical inspectors for the Building Codes Division visit places under construction to determine if the plumbing and electrical work is installed according to standards. The inspectors only go to those structures where there is no local jurisdiction to do the inspections. The inspectors from the State Electrical Board and the Board of Plumbers, Department of Commerce, also visit buildings under construction to determine if the electricians and plumbers are licensed by the respective boards. The inspectors from the division and the Department of Commerce are visiting the same structures to obtain different information. This procedure is not an efficient and effective method of enforcing code and licensing requirements.

An audit of this area could examine if it would be feasible to combine the two inspection functions. However, this issue has already been addressed several times in recent legislative sessions resulting in the present split inspections.

Issue 5 - Computerization of Records

None of the records at the Building Codes Division are automated. In fiscal year 1981-82, 1,210 plumbing permits, 166 mechanical permits, and 11,501 electrical permits were manually issued by the division. When an application for a building permit is submitted there is no cross-check to determine whether a plumbing, electrical, or mechanical permit has been issued for the building.

Information about insignias and inspection reports of recreational vehicles and factory-built buildings are submitted to the division at various times throughout the year. It is difficult for the bureau to cross-reference this information in a timely manner. In fiscal year 1981-82 the division issued 903 insignias for factory-built buildings and conducted 15 inspections of in-state factories. In the same time period 2,967 insignias for recreational vehicles were issued and 15 in-state dealer lot inspections were conducted.

All of the permits issued by the division are filed by the number of the permit. If a person has a question about a particular building, contractor, etc. a log must be reviewed to find the permit number.

The division presently has sufficient documentation to support computerization of its records.

Issue 6 - Other Concerns

Other concerns identified in the course of the survey include:

1. Occupancy certificates, ensuring the building is safe for occupancy, are not issued by the state. Division officials do not believe buildings are inspected as many times as is necessary during construction to declare in writing buildings are safe.
2. Freight elevators are not inspected even though people have been killed using them.
3. The fee structure for insignias on recreational vehicles and factory-built buildings may not be covering the costs of the needed inspections.
4. Procedures have not been established for file retention or complaints.

An audit would not substantially help to resolve these concerns. The occupancy certificate issue was pointed out to us by division officials. The issue could only be corrected after our previously noted concerns with the inspection process have been addressed. Freight elevators were excluded from inspection during the 1979 Legislative Session. Fee structures and administrative procedures could be revised by the division as necessary.

Conclusion

Although the survey has uncovered several areas where state building code activities could be improved, it does not appear that an audit is justified. This is because many of the issues have recently been addressed by the Legislature or could be corrected directly by the division and the department.